(43)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 2718 of 2007

Petitioner Lakesh Jatere S/o Neresh Kumar Jatere Aged About 33 Years, R/o Station ward no.9 Near the over bridge Rajnandgaon Teh. & Distt. Rajnandgaon (C.G.)

Versus

Respondents

1. The Registrar General, Chhattisgarh High Court, Bilaspur (C.G.)
2. The District and Session Judge, Rajnandgaon Distt. Rajnandgaon (C.G.)

Writ petition under Article 226 of the Constitution of India

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Present: Mr. Vivek Kumar Pandey, Advocate for the petitioner.

O R D E R
(Passed on 4th Day of May, 2007)

1. By this petition, the petitioner seeks a writ in the nature of certiorari to quash the orders dated 23.08.2006 (Annexure P/1) and order dated 11.03.2003 (Annexure P/2) whereunder and whereby, the services of the petitioner as daily wages worker was discontinued and thereafter confirmed by the appellate authority.

2. The indisputable facts, in nutshell, are that the petitioner was appointed on the post of Sweeper at Civil Court, Khairagarh, on daily wages vide order dated 31.10.1994. The petitioner stopped attending the office from 25.01.2003. The services of the petitioner was discontinued vide order dated 11.03.2003 on the ground of absence from duty as also on the ground that his services was not required. The petitioner preferred an appeal before the Registrar General, High Court of Chhattisgarh. The Registrar General, respondent no. 1, dismissed the appeal with reasoned orders. The petitioner has impugned in this petition the above-stated orders dated 23.08.2006 (Annexure P/1) and 11.03.2003 (Annexure P/2).

3. It is no longer res-integra that an appointment dehors the constitutional scheme of employment and not in accordance with rules framed under proviso to Article

(44)

309 of the Constitution of India, is bad ab-initio. The constitution provides for equality of opportunity in matters of public employment. The appointment of the petitioner is not on the basis of open invitation to all the eligible candidates and through proper selection process. Thus, this appointment amounts to back door entry in the matter of public employment.

4. The Constitutional bench of the Supreme Court in the case of **Secretary, State of Karnataka & others Vs. Umadevi (3) and others**[1], in para 44 has held as under:-

> *"44. ..... It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality."*

5. In the case of ***Secretary, State of Karnataka and others*** (Supra), the Supreme Court observed as under :-

> *"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."*
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> *"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission."*

8. For the reasons stated hereinabove and as per the dicta laid down by the Supreme Court, the petitioner is not entitled to reinstatement / continuation in the services.

9. This petition is accordingly dismissed summarily. No order as to costs.

Sd/-
Satish K.Agnihotri
Judge